

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2818 OF 1997
With
WRIT PETITION NO.2817 OF 1997
With
WRIT PETITION NO.2819 OF 1997
With
WRIT PETITION NO.2820 OF 1997
With
WRIT PETITION NO.2821 OF 1997
With
WRIT PETITION NO.2822 OF 1997
With
WRIT PETITION NO.2823 OF 1997
With
WRIT PETITION NO.2824 OF 1997
With
WRIT PETITION NO.2825 OF 1997

WP No.2818 of 1997

Shri Maruti Laxman Chorghe,)
since deceased through his)
legal heirs)

1. Smt.Laxmibai Maruti Chorghe,)
Adult.)

2. Shri Gopal Maruti Chorghe,)
Adult,)

3. Shri Manohar Maruti Chorghe,)
Adult, Petitioner Nos.1 to 3 all)
residing at Poyanje,)
Taluka - Panvel,)
District - Raigad.)

4. Smt.Vanita Balaram Gaikar,)
Adult, residing at Ajivali,)
Taluka - Panvel,)
District - Raigad.)

5. Smt.Priti Pramod Patil, Adult,)
residing at Chirner,)
Taluka - Panvel,)
District - Raigad.).. Petitioners

Versus

1. The Special Land Acquisition Officer (Minor Irrigation) Raigad) Alibag, District - Raigad.)
2. The Taluka Inspector of Land Records, Panvel Taluka, having his office at Panvel, Dist : Raigad.)
3. The Collector, District Raigad, having his office at Alibag, District - Raigad.)
4. The State of Maharashtra.).. Respondents
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WP No.2817 of 1997

1. Smt.Parvatibai Mahadu Thakur, Adult,)
2. Shri Anant Mahadu Thakur, Adult,))
3. Shri Dnyaneshwar Mahadu Thakur, Adult,)
4. Miss Nandu Mahadu Thakur, Adult,))
Petitioner Nos.1 to 4, all)
residing at Poyanje,)
Taluka -Panvel, District-Raigad.)
5. Smt.Manda Lakhu Thombare, Adult,))
residing at Asaroti,)
Taluka - Khalapur,)
District - Raigad.)..Petitioners.

Versus

1. The Special Land Acquisition Officer (Minor Irrigation) Raigad) Alibag, District - Raigad.)
2. The Taluka Inspector of Land)

- Records, Panvel Taluka, having)
his office at Panvel,)
Dist : Raigad.)
3. The Collector, District Raigad,)
having his office at Alibag,)
District - Raigad.)
4. The State of Maharashtra.).. Respondents
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WP No.2819 of 1997

Anant Baliram Sontakke, Adult,)
residing at Poyanje,)
Taluka: Panvel, District-Raigad.).. Petitioner.

Vs.

1. The Special Land Acquisition)
Officer (Minor Irrigation) Raigad) Alibag, District - Raigad.)
2. The Taluka Inspector of Land)
Records, Panvel Taluka, having)
his office at Panvel,)
Dist : Raigad.)
3. The Collector, District Raigad,)
having his office at Alibag,)
District - Raigad.)
4. The State of Maharashtra.).. Respondents
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WP No.2820 of 1997

Vasant Dhundiraj Joshi, Adult,)
residing at Poyanje,)
Taluka - Panvel, District ; Raigad.).. Petitioner.

Vs.

1. The Special Land Acquisition)
Officer, Raigad, Alibag,)

- District - Raigad.)
2. The Taluka Inspector of Land)
Records, Panvel Taluka, having)
his office at Panvel,)
Dist : Raigad.)
3. The Collector, District Raigad,)
having his office at Alibag,)
District - Raigad.)
4. The State of Maharashtra.).. Respondents
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WP No.2821 of 1997

Bhagirathi Pandurang Mate,)
since deceased through her heir)
and legal representative)
Namdeo Mahadu Kadav, Adult,)
residing at Poyanje,)
Taluka - Panvel, District ; Raigad.).. Petitioner.

Vs.

1. The Special Land Acquisition)
Officer, Raigad, Alibag,)
District - Raigad.)
2. The Taluka Inspector of Land)
Records, Panvel Taluka, having)
his office at Panvel,)
Dist : Raigad.)
3. The Collector, District Raigad,)
having his office at Alibag,)
District - Raigad.)
4. The State of Maharashtra.).. Respondents
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WP No.2822 of 1997

Balu Vithu Thakur, Adult,)
residing at Poyanje,)
Taluka - Panvel, District ; Raigad.).. Petitioner.

Vs.

1. The Special Land Acquisition Officer, Raigad, Alibag, District - Raigad.)
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)
2. The Taluka Inspector of Land Records, Panvel Taluka, having his office at Panvel, Dist : Raigad.)
)
)
3. The Collector, District Raigad, having his office at Alibag, District - Raigad.)
)
)
4. The State of Maharashtra.).. Respondents
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WP No.2823 of 1997

Gopal Balu Padval, Adult,)
residing at Barwai,)
Taluka - Panvel, District ; Raigad.).. Petitioner.

Vs.

1. The Special Land Acquisition Officer, (Minor Irrigation) Raigad, Alibag, District-Raigad.)
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)
2. The Taluka Inspector of Land Records, Panvel Taluka, having his office at Panvel, Dist : Raigad.)
)
)
3. The Collector, District Raigad, having his office at Alibag, District - Raigad.)
)
)
4. The State of Maharashtra.).. Respondents
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WP No.2824 of 1997

1. Kamalakar Baliram Sontakke,)

- Adult,)
residing at Poyanje,)
Taluka-Panvel, District-Raigad.)
2. Prabhakar Baliram Sontakke,)
Adult, residing at Chambhari,)
Taluka-Panvel, District-Raigad.)..Petitioners

Versus

1. The Special Land Acquisition)
Officer, (Minor Irrigation))
Raigad, Alibag, District-Raigad.)
2. The Taluka Inspector of Land)
Records, Panvel Taluka, having)
his office at Panvel,)
Dist : Raigad.)
3. The Collector, District Raigad,)
having his office at Alibag,)
District - Raigad.)
4. The State of Maharashtra.).. Respondents

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WP No.2825 of 1997

Prakash Vasudeo Deodhar, Adult,)
residing at Plot No.22,)
Middle Class Housing Society, Panvel,)
Taluka - Panvel, District ; Raigad.).. Petitioner.

Vs.

1. The Special Land Acquisition)
Officer, Raigad, Alibag,)
District - Raigad.)
2. The Taluka Inspector of Land)
Records, Panvel Taluka, having)
his office at Panvel,)
Dist : Raigad.)
3. The Collector, District Raigad,)

having his office at Alibag,)
District - Raigad.)

4. The State of Maharashtra.).. Respondents
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Shri Rajesh Datar, Advocate, for the petitioners in
all the above writ petitions.

Shri V.S.Gokhale, AGP for the respondents in all the
above writ petitions.
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CORAM: R.M.S.KHANDEPARKAR &
 V.M.KANADE, JJ

DATED: 18TH AUGUST, 2005

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Since common questions of law and facts arise
in these petitions, they were heard together and are
being disposed of by this common judgment.

2. In these petitions, the only grievance which
is sought to be canvassed before us relates to the
inordinate delay in issuing the notice under Section
12(2) of the Land Acquisition Act, 1894, hereinafter
called as "the said Act", and on that count, the
petitioners being compelled to pay higher court fee,
as during the period after passing of the award under
Section 11 and before issuance of notice under Section
12(2) of the said Act, there was amendment to the

Bombay Court Fees Act, 1958 which came into force on 21st February, 1997.

3. Consequent to the initiation of the land acquisition proceedings in respect of the properties in question by issuance of notification under Section 4 of the said Act on 12th September, 1995, the land in question was acquired and the award in that respect was passed on 10th December, 1996 after following the due process, as prescribed under the said Act. However, the said notice under Section 12(2) pursuant to the award was issued only on 3rd February, 1997 and the same was received by the petitioners in the month of March, 1997. The petitioners being dissatisfied with the compensation awarded have filed the application under Section 18 of the said Act.

4. The Bombay Court Fees Act was amended with effect from 21st February, 1997 and maximum court fee payable for the purpose of application under Section 18 of the said Act was enhanced from Rs.15,000/- to Rs.75,000/-. In other words, it is the contention of the petitioners that if the notice under Section 12(2) of the said Act, in the case in hand, was issued to the petitioners immediately after the declaration of the award dated 10th December, 1996, the petitioners

could have filed reference application by paying the court fee in accordance with the provisions of law, as were in force prior to 21st February, 1997. However, on account of the amendment to the Court Fees Act with effect from 21st February, 1997 and since the notice under Section 12(2) of the said Act was issued much after the said date in relation to the award dated 10th December, 1996, the petitioners were compelled to pay the higher court fee.

5. Upon hearing the learned Advocates for the parties and perusal of the records as well as the relevant provisions of law, it is apparent that in terms of Section 12(2) of the said Act, the Collector is expected to issue notice of his award to the persons interested immediately after the declaration of the award under Section 11. Undoubtedly, sub-section (2) specifically states that the Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made. Referring to the term "immediate notice", it was sought to be argued that the Collector was duty bound to issue notice immediately after 10th December, 1996 and having failed to do so, the petitioners were compelled to pay higher court fees on account of

amendment brought to the Bombay Court Fees Act, 1959 during the period between the declaration of the award and issuance of the said notice.

6. The expression "immediate notice" cannot be understood as being the day following the declaration of the award. Undoubtedly, the said expression has been used to ensure that the persons interested, whose land is acquired, are able to get compensation as expeditiously as possible on account of their land having acquired. The provisions of law comprised under Section 4 onwards of the said Act and particularly sub-section (3) of Section 6 clearly reveals that a declaration issued under Section 6 shall be conclusive evidence that the land is needed for a public purpose and after making such declaration, the Government may acquire the land in the manner thereafter provided. Evidently, it would create a sort of embargo over the land, and the owner thereof would not be in a position to deal with the land in the manner he may otherwise desire. In such circumstances therefore even Section 11A prescribes a period of limitation for passing the award within two years from the date of the declaration under Section 6. Considering the same, the authorities are certainly expected to inform the persons interested

about the award as expeditiously as possible as soon as the award is declared. However, what would be the reasonable period for such intimation to the persons interested would depend upon the facts of each case and there cannot be any general rule as such which can fix any particular period for the purpose of issuance of notice under Section 12(2) of the said Act. In any case, the statutory provision under the said Act does not create any right as such in favour of the persons interested to get intimation of the award within any specific period consequent to the declaration of the award. In such circumstances therefore even assuming that there is a delay in issuing the notice under Section 12(2) of the said Act after pronouncement of the award, it would not lead to the conclusion that any right having been created in favour of the persons interested in the land in question apart from claiming interest on compensation for the relevant period. Indeed, Section sub-sections (1A) and (2) of Section 23 of the said Act provide for sufficient safeguard regarding the right of the persons interested on account of any such delay on the part of the authorities.

7. For the reasons stated above therefore, merely because there is delay on the part of the authorities

in communicating the award in the matter in hand, and during the period of delay, there was amendment to the Bombay Court Fees Act, pursuant to which the petitioners were liable to pay higher court fee, it cannot be said that the petitioners would be entitled for the relief in the nature asked for. There being no rights of the petitioners affected, nor there being any failure on the part of the respondents to perform their duty as such, the question of issuance of writ of mandamus directing the respondents to accept reference application of payment of lesser court fees and in accordance with the provisions which were in force prior to 21st February, 1997 does not arise. No writ can be issued contrary to the statutory provisions.

8. As regards the relief for payment of balance amount, the learned Advocate for the petitioners has fairly submitted that such amount has already been paid, and therefore, the prayer in that regard does not survive.

9. As regards the third point which relates to furnishing of copies of various documents, undisputedly, the petitioners have filed the reference applications and the Court dealing with such reference

applications can certainly entertain the appropriate applications in terms of the provisions of law comprised under Order 11 and 13 of the Code of Civil Procedure, 1908. The parties are also entitled to serve appropriate notices for production of documents for inspection as well as for supply of copies and in case of failure on the part of the Opponent, the parties can also approach the Court in the said reference applications for appropriate orders in that regard. Needless to say that in case the petitioners file such application in such reference proceedings, the Reference Court will have to pass an appropriate order on such application, in accordance with the provisions of law. At this stage, it is too premature to issue any direction as such to the respondents to supply copy of any document. We are keeping the said issue open to be agitated before the Reference Court.

10. In the circumstances, therefore, nothing survives in these petitions and the petitions are accordingly disposed of. Rule in all these petitions stands discharged with no order as to costs.

11. Before we part with the matter, it is to be noted that the petitioners have deposited the court fee amount before the Reference Court. The Reference

Court will have to adjust such amount towards the appropriate court fee payable on each reference application at the time of disposal of the reference applications.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)